

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RONALD DERRICK NANCE,

Plaintiff,

v.

PLEASANT VALLEY
STATE PRISON, et al.,

Defendants.

CASE NO. 1:98-cv-06281-AWI-SMS PC

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

(Doc. 163)

Order on Motion for Reconsideration

I. Procedural History

Plaintiff Ronald Derrick Nance is a state prisoner who was proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On September 19, 2003, Defendants' motion to dismiss was granted, and this action was dismissed, without prejudice, based on Plaintiff's failure to exhaust the available administrative remedies in compliance with 42 U.S.C. § 1997e(a). On February 11, 2005, the United States Court of Appeals for the Ninth Circuit affirmed the dismissal. On November 4, 2009, Plaintiff filed a motion seeking to set aside judgment.¹ Defendants did not file a response.

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¹ Although filed on a form petition for writ of habeas corpus, Plaintiff is clearly seeking to reopen his civil rights case.

1 **II. Legal Standard**

2 Plaintiff's appeal of the dismissal of this action was affirmed by the Ninth Circuit, and
3 mandate issued. Fed. R. App. P. 41. Therefore, the Court has jurisdiction to consider Plaintiff's
4 motion to set aside judgment. Standard Oil Co. of California v. United States, 429 U.S. 17, 18-9,
5 97 S.Ct. 31 (1976); Gould v. Mutual Life Insurance Co. of New York, 790 F.2d 769, 772-73 (9th
6 Cir. 1986).

7 Federal Rule of Civil Procedure 60(b)(6) allows the Court to relieve a party from an order
8 for any reason that justifies relief. Rule 60(b)(6) "is to be used sparingly as an equitable remedy to
9 prevent manifest injustice and is to be utilized only where extraordinary circumstances . . ." exist.
10 Harvest v. Castro, 531 F.3d 737, 749 (9th Cir. 2008) (internal quotations marks and citation
11 omitted). The moving party "must demonstrate both injury and circumstances beyond his control
12" Id. (internal quotation marks and citation omitted).

13 Further, Local Rule 230(j) requires, in relevant part, that Plaintiff show "what new or
14 different facts or circumstances are claimed to exist which did not exist or were not shown upon such
15 prior motion, or what other grounds exist for the motion," and "why the facts or circumstances were
16 not shown at the time of the prior motion." "A motion for reconsideration should not be granted,
17 absent highly unusual circumstances, unless the district court is presented with newly discovered
18 evidence, committed clear error, or if there is an intervening change in the controlling law," and it
19 "may *not* be used to raise arguments or present evidence for the first time when they could
20 reasonably have been raised earlier in the litigation." Marlyn Nutraceuticals, Inc. v. Mucos Pharma
21 GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted)
22 (emphasis in original).

23 **III. Discussion**

24 **A. Timeliness of Motion**

25 A motion for reconsideration must be brought within a reasonable time. Fed. R. Civ. P.
26 60(c)(1). In determining whether the motion was brought within a reasonable time, courts look to
27 "the facts of each case, taking into consideration the interest in finality, the reason for delay, the
28 practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to the other

1 parties.”” Lemoge v. United States, 587 F.3d 1188, 1196-97 (9th Cir. 2009) (quoting Ashford v.
2 Steuart, 657 F2d. 1053, 1055 (9th Cir. 1981)); also In re Pacific Far East Lines, Inc., 889 F.2d 242,
3 249 (9th Cir. 1989).

4 This action was filed more than eleven years ago and necessarily concerned events arising
5 prior to that time. Judgment was entered almost seven years ago, and that judgment was affirmed
6 on appeal more than five years ago. Certainly the interest in finality weighs against Plaintiff given
7 the sheer number of years which have passed.

8 Plaintiff offers no explanation for the almost seven year delay between entry of judgment and
9 the filing of his motion seeking reconsideration, or the more than five year delay between the
10 affirmance of the dismissal on appeal and the filing of the motion. Plaintiff states only that, after
11 carefully researching the case, he believes the Court erred in dismissing it, and he then proceeds to
12 set forth the reasons he believes the dismissal was in error. (Doc. 163, Motion, p. 3.)

13 In addition to proffering no explanation for the extraordinary delay in bringing the motion,
14 the grounds raised in the motion do not appear to be based on new facts which could not have been
15 known to Plaintiff at the time or to be based on a change in the law. Plaintiff asserts that the Court
16 erred in dismissing this action for failure to exhaust because the appeals coordinator failed to forward
17 his appeal to the next level of review, the process was futile, and individuals released from prison
18 prior to filing suit need not exhaust. All of these grounds were or should have been known to
19 Plaintiff at the time Defendants brought their motion to dismiss, allowing him to raise them in
20 opposition to the motion.

21 Indeed, in his motion, Plaintiff directs the Court’s attention to Greig v. Goord, 169 F.3d 165,
22 167 (2d Cir. 1999), which held that former prisoners who file suit after release are not required to
23 exhaust. (Doc. 163, pp. 4, 5.) Not only is Greig not a newly decided case but it was already cited
24 to by Plaintiff in the underlying proceedings and considered by the Magistrate Judge in
25 recommending that Defendants’ motion to dismiss be granted. (Doc. 147, p. 3:24-4:3.) Also
26 considered by the Court was Plaintiff’s admission that he was a prisoner when he filed this action.
27 (Doc. 140, Opp. to MTD, p. 11; Doc. 163, 3:23-24.) Reconsideration is not intended to allow

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1 Plaintiff to rehash issues already considered by the Court. Marlyn Nutraceuticals, Inc., 571 F.3d at
2 880.

3 The factors discussed herein weigh in favor of finding Plaintiff's motion untimely, and the
4 Court so finds.

5 **IV. Conclusion and Order**

6 Plaintiff has not set forth any justification for bringing his motion years after both the
7 dismissal of this action and the affirmance of the dismissal on appeal. The Court finds that
8 Plaintiff's motion was not brought within a reasonable time and it is HEREBY DENIED on that
9 ground.

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11 IT IS SO ORDERED.

12 Dated: June 28, 2010

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14 CHIEF UNITED STATES DISTRICT JUDGE
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